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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**BISHOP PAIUTE TRIBE, a federally
recognized Indian tribal government,**

Plaintiff,

v.

**GAVIN NEWSOM, Governor of the State
of California, and the STATE OF
CALIFORNIA,**

Defendants.

1:20-cv-01318-ADA-SKO
JOINT STATUS REPORT

Pursuant to the parties' Joint Status Report filed on August 3, 2023, the plaintiff Bishop Paiute Tribe ("Tribe") and defendants Governor Gavin Newsom and State of California ("State") hereby submit this further Joint Status Report.

1 **1. Procedural History.** On September 15, 2020, the Tribe filed this lawsuit following
 2 approximately five years of unsuccessful negotiations with the State for a new or amended
 3 tribal-state class III gaming compact (“compact”). The complaint alleged “bad faith”
 4 negotiations by the State, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §
 5 2710(d)(7) (“IGRA”). This case and other related bad faith cases trailed the related case
 6 of *Chicken Ranch Rancheria et al. v. Newsom et al.*, 1:19-cv-00024-AWI-SKO.
 7 (“*Chicken Ranch*”). The Tribe contends that *Chicken Ranch* raised, in two causes of
 8 action, essentially identical claims as the complaint’s single cause of action in this case,
 9 namely, that the State negotiated in bad faith in violation of IGRA by insisting on
 10 including improper subjects of compact negotiations. The State contends that based on
 11 the fourteen separately pled counts in the Tribe’s complaint—compared to the two causes
 12 of action pled in the *Chicken Ranch* complaint—these lawsuits pled overlapping but not
 13 “essentially identical” claims. The parties concur that *Chicken Ranch* resolved the central
 14 legal issues in this case, based on a largely identical record of negotiations. In *Chicken*
 15 *Ranch*, the District Court granted summary judgment for the plaintiff tribes on March 31,
 16 2021 (*see id.*), and the Ninth Circuit affirmed the judgment on July 28, 2022. *Chicken*
 17 *Ranch, supra*, 42 F.4th 1024 (9th Cir. 2022).

18 Based on the Ninth Circuit’s decision in *Chicken Ranch*, the parties in this case
 19 stipulated to entry of summary judgment for the Tribe, *see* Docket Entry 53 (12/6/22), and
 20 thereafter the Court entered an order granting summary judgment in the Tribe’s favor
 21 “consistent with the Ninth Circuit’s decision in *Chicken Ranch Rancheria of Me-Wuk*
 22 *Indians v. California (Chicken Ranch)*, 42 F.4th 1024 (9th Cir. 2022), and the undisputed
 23 facts agreed upon by the parties.” *See* Docket Entry 54 (1/27/23) (“Order”). The Order
 24 directed the parties to pursue IGRA’s remedial scheme pursuant to 25 U.S.C. §
 25 2710(d)(7)(B)(iii)-(vii).

26 The parties thereafter engaged in further negotiations pursuant to the Order and 25
 27 U.S.C. § 2710(d)(7)(B)(iii). That statute provides for a sixty-day period to conclude a
 28 compact. The parties were not able to conclude a compact during that time period, but

1 mutually agreed to continue negotiations for a brief additional period of time in the
 2 interest of seeking a negotiated resolution. The parties exchanged several proposed draft
 3 compacts during this period, as well as conducted negotiations. However, the parties were
 4 not able to reach agreement on a compact.

5 Simultaneously, the parties have agreed to extend the term of the Tribe's existing
 6 compact from its current expiration date of December 31, 2023, through December 31,
 7 2024, which will require approval by the California Legislature. The parties intended that
 8 twelve-month extension to allow sufficient time to either conclude a negotiated compact
 9 or otherwise conclude IGRA's remedial process. As of the date of this filing, the
 10 extension has been approved by the Tribe and signed by the Governor, and its ratification
 11 has been introduced in the Legislature in AB 1658. The Senate has completed its required
 12 hearing and the Assembly hearing is scheduled for Tuesday, September 5, 2023. The
 13 parties anticipate its passage before the Legislature adjourns on September 14, 2023.

14 Because the parties were unable to reach an agreement, they will move the Court
 15 to appoint a mediator, as the Court did in the related *Chicken Ranch* case, pursuant to 25
 16 U.S.C. § 2710(d)(7)(B)(iv). The Tribe has provided the State with a list of potential
 17 proposed mediators, and the State is evaluating that list. The parties will continue to seek
 18 to reach agreement on a qualified and available mediator, and report their progress to the
 19 Court within thirty days of this filing. Following the mediator's appointment by this
 20 Court, the mediator will then perform his or her duties under 25 U.S.C. §
 21 2710(d)(7)(B)(iv-vii) by selecting from the parties' last, best compact offers the compact
 22 that best comports with IGRA, the Court's Order, and federal law. *See id.* If the State
 23 consents to the compact selected by the mediator, that shall be treated as the compact
 24 entered into under IGRA, 25 U.S.C. § 2710(d)(3). *See id.* at § 2710(d)(7)(B)(vi). If the
 25 State does not consent thereto, the Secretary would then promulgate procedures in lieu of
 26 a compact. *See id.* at § 2710(d)(7)(vii).

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 28 **2. Pending Motions.** No motions are currently pending.

3. **Settlement Negotiations.** *See* discussion *supra* at ¶ 1. At this time, the parties do not believe a mandatory settlement conference before a Magistrate Judge would be of assistance. The parties do not consent to conduct further proceedings before a Magistrate Judge.

Dated: September 5, 2023

Respectfully submitted,

By: /s/ Frank Lawrence
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Attorneys for Plaintiff

Dated: September 5, 2023

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